IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 18.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.29510 and 29511 of 2015
and M.P.Nos.1 & 2 of 2015
in W.P.Nos.29510 and 29511 of 2015
and M.P.No.3 of 2015 in W.P.No.29510 of 2015

G.Muralidharan [Petitioner in both WPs]
Proprietor of Mekala Airfirdge Electronics
No.865, Bangalore Main Road
Chengam 606 701
Tiruvannamalai District

..vs..

The Commercial Tax Officer
Polur,
Tiruvannamalai District [Respondent in both Wps]

Prayer: These Writ Petitions are filed under Article 226 of the Constitution of India, seeking for a Writ of certiorarified mandamus to call for the records on the file of the respondent in his impugned proceedings made in N.Dis.1096/2015 and 1097/15 respectively dated 18.8.2015, quash the same as illegal and contrary to the scheme of the Act and further direct the respondent to do re-assessment for the years 2012-2013 and 2013-14 respectively under TNVAT Act 2006 under the provisions of Section 22(6)(a) of the Act on the basis of returns filed by the petitioner.

For Petitioner : Ms.R.Hemalatha
in both the Petitions
For Respondent : Mr.S.Kanmani Annamalai, AGP
in both the Petitions

O R D E R

The petitioner, who is a registration cancelled dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the TNVAT Act), has filed these write petitions challenging the proceedings of the respondent dated 18.08.2015, by which, the respondent has refused to accept the revised returns filed by the petitioner and returned the demand drafts enclosed by him.

2. The petitioner, who was a registered dealer, did not file the returns for three years. That apart, the registration certificate was also cancelled. The department, on verification of the purchases from other registration dealers Annexure II in the departmental website, found that the petitioner had purchased goods for the value of Rs.30,57,595/- and Rs.43,05,448/- respectively, but failed to file returns and report the turnover. Therefore, the sales suppression was estimated at Rs.53,79,839/- and Rs.63,12,864/- and assessed to tax at Rs.7,70,658/- and Rs.8,98,808/- and Penalty at Rs.7,70,658/- and Rs.10,78,568/- respectively.

3. To recover the arrears of tax, distraint proceedings were taken and at that juncture, the petitioner filed the returns, enclosing demand drafts alleging the same to be the admitted tax liability. The petitioner seeks to invoke Section 22(6) of the TNAVAT Act and submits that the respondent should re-open the assessment.

4. The submission made by the petitioner is querulous because admittedly the returns are not filed within 30 days from the last date on which the returns should have been filed. In fact, for three long years, the petitioner did not file any return. Therefore, the respondent was justified in refusing to accept the returns and the demand draft was returned. That apart, to exercise of power under Section 22(6) of the TNVAT Act, the Assessing Officer should be satisfied that the dealer was prevented by circumstances beyond control to file the return in time. The petitioner, undoubtedly, cannot be stated to be a dealer who is not well in fund, especially when they are dealers in electronics and also considering the turnover for those two years. Therefore, the impugned orders are perfectly legal and valid. Accordingly, the writ petitions are dismissed.

5. The learned counsel for the petitioner submits that the petitioner may be directed to file appeals before the appellate authority.

6. Considering the peculiar circumstances of the case, liberty is granted to the petitioner to file appeals before the appellate authority against the orders of assessment passed by the respondent dated 17.02.2015 for the years 2012-13 and 2013-14 and if such appeals are filed within a period of thirty days from the date of receipt of a copy of this order, the appellate authority, shall entertain the same without reference to the limitation, subject to the compliance of other conditions. It is made clear that the order of attachment passed by the respondent shall continue and abide by the result of the appeals.

No costs. Connected miscellaneous petitions are closed.

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s/d-
Assistant Registrar(CS-VII)

True Copy

Sub-Assistant Registrar

To

The Commercial Tax Officer
Polur,
Tiruvannamalai District

+ 1 cc to Spl.Govt.Pleader SR 40395

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prk2/8 W.P.Nos.29510 and 29511 of 2015